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Chair: Mr. Gunnarsson ..... (Iceland)

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The meeting was called to order at 10.05 a.m.

Agenda item 72: Promotion and protection of human rights (A/72/40 and A/C.3/72/9) (*continued*)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/72/127, A/72/128, A/72/131, A/72/132, A/72/133, A/72/135, A/72/137, A/72/139, A/72/140, A/72/153, A/72/155, A/72/162, A/72/163, A/72/164, A/72/165, A/72/170, A/72/171, A/72/172, A/72/173, A/72/187, A/72/188, A/72/201, A/72/202, A/72/219, A/72/230, A/72/256, A/72/260, A/72/277, A/72/280, A/72/284, A/72/289, A/72/290, A/72/316, A/72/335, A/72/350, A/72/351, A/72/365, A/72/370, A/72/381, A/72/495, A/72/496, A/72/502, A/72/518, A/72/523 and A/72/540)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/72/279, A/72/281, A/72/322, A/72/322/Corr.1, A/72/382, A/72/394, A/72/493, A/72/498 and A/72/556; A/72/580-S/2017/798, A/72/581-S/2017/799, A/72/582-S/2017/800, A/72/583-S/2017/816, A/72/584-S/2017/817, A/72/585-S/2017/818, A/72/586-S/2017/819, A/72/587-S/2017/852, A/C.3/72/11, A/72/588-S/2017/873, A/C.3/72/14 and A/C.3/72/16)

1. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence), introducing his report (A/72/523), said that he had argued for the adoption of a substantive and comprehensive framework approach to prevention. To date, prevention efforts had been reactive, often incoherent and neither holistic nor strategic, and they had not had significant links to human rights. Despite an emerging consensus about the need to upstream prevention work and address human rights issues, there was no clear idea of what that might entail and how the United Nations system or anyone else could achieve the required degree of coordination.

2. From a practical standpoint, prevention work had been hindered by poor investments and weak commitments. However, it had also suffered from knowledge silos and a tendency to focus solely on institutional reform, despite the important potential of civil society and the role of culture. A comprehensive framework approach would provide incentives to move from the abstract to the concrete, break down silos and integrate measures known to be effective but seldom deployed as prevention tools in any systematic way.

3. His report presented a bare-bones framework that would need to be filled out. Moreover, a prevention framework was not the same as a policy blueprint tailored to a specific context. Nevertheless, for planning purposes, it was better to have such a tool.

4. With respect to civilian institutions, it was essential to ensure an effective means of delivering proof of legal identity, which was a gateway for the realization of other rights, as well as to encourage governments to ratify international human rights instruments and incorporate them into prevention policy and domestic law. Regarding constitutional reform, at a minimum, constitutions should be amended to remove discriminatory provisions and introduce mechanisms of inclusion, but they could also be improved by appending a bill of rights, although its preventive potential depended as much on the process of producing the text as on the text itself. In addition, a constitutional court could be established to address massive human rights violations when judges could not be trusted but also could not be fired.

5. With respect to the security sector, prevention measures could include vetting police, armed forces and intelligence service personnel, which helped to dismantle networks of criminality, and giving precise constitutional definition to the role of police, military and intelligence institutions. Because periods of conflict and serious risk of conflict tempted governments to create special security bodies with partially overlapping mandates and unclear lines of reporting and command, another important step might be to rationalize forces and clarify reporting and command lines. Other steps included establishing or strengthening multilayered civilian oversight mechanisms, eliminating military prerogatives and restricting the jurisdiction of military courts.

6. Even though civil society had been an engine of progress in human rights, most discussions about prevention ignored it or assigned it narrow, predictable functions such as advocacy, monitoring and reporting. There was a robust correlation between a strong and autonomous civil society and positive human rights indicators, in part because civil society aggregated shared views and bonds of concern. A framework approach should therefore include measures to strengthen civil society and increase its autonomy, such as repealing laws that limited civic space, establishing civil society platforms, coalitions or networks, creating official forums of consultation and fostering an enabling environment.

7. Lastly, a comprehensive prevention framework should include actions aimed at sustainable social

change. Three obvious areas of intervention were education, arts and culture, and archives and documentation.

8. **Ms. Mugaas** (Norway) said that the Human Rights Up Front initiative was highly relevant but needed continued political and financial support to deliver on its objectives. Her delegation welcomed the emphasis on the role of civil society in preventing conflict and human rights violations. She asked about possible next steps for ensuring that United Nations reform included a comprehensive, human rights-based prevention framework.

9. **Mr. Forax** (Observer for the European Union) said that strategic, proactive and holistic conflict prevention should be at the core of any new institutional mechanisms and competences. Given the importance of strong civil society participation, he would like to know how States could enable civil society organizations and networks to engage more deeply on human rights and conflict prevention and what the United Nations could do to ensure the safety of civil society actors and facilitate their work.

10. **Mr. Carabalí Baquero** (Colombia) said that his delegation welcomed the report of the Special Rapporteur on his global study on transitional justice (A/HRC/36/50/Add.1), including in particular his promotion of the sharing of lessons learned and good practices. Colombia remained committed to building lasting peace after five decades of armed conflict. The final peace agreement addressed the structural causes of the conflict through comprehensive rural reform and measures aimed at solving the problem of illicit drugs, expanding democracy and promoting political participation. All phases of determining the shape and functions of the truth commission and the search unit had been carried out with the effective participation of victims and victims' organizations. In that connection, the members of the truth commission would be announced on 14 November. His delegation wished to reaffirm Colombia's interest in following up on the Special Rapporteur's work, in accordance with the priorities of his mandate.

11. **Ms. Fontana** (Switzerland) said that her Government also recognized the limitations of the "early warning early action" approach and emphasized national preventive mechanisms and institutional and societal resilience in its cooperation policy. She would like to know what steps the United Nations system should take to overcome structural and operational challenges for prevention. Her delegation particularly appreciated the efforts of the Special Rapporteur to break down silos.

12. **Mr. Kelly** (Ireland) said that his delegation agreed that a framework approach to prevention should include actions to support and strengthen civil society. He asked for some examples of platforms, coalitions or networks established by civil society actors.

13. **Ms. Brooks** (United States of America) said that her delegation appreciated that there was no one-size-fits-all prevention solution but considered it vital to learn from each unique context. In view of the critical role of civil society organizations, it welcomed the Special Rapporteur's guidance on how States could better support them through a framework approach.

14. **Mr. de Greiff** (Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) said that he appreciated the recognition of his efforts to establish conceptual links between transitional justice and other themes. With prevention back at the top of the agenda, there was a good possibility of progress on it, especially given the apparently broad agreement on the importance of including human rights. To date, the issue of prevention had sparked discussions focused solely on internal structural reform, which was an abstract goal. The next step should be a much more serious, sustained and in-depth discussion of the specific tasks required for effective prevention.

15. With respect to strengthening civil society, in many countries it was important to repeal recent legislation closing off civil space. In others, such as Sri Lanka, individual sectors of civil society were strong and competent, but they would be more effective if they could build networks with other sectors, and while governments should not run or create such networks, they could facilitate their establishment. Lastly, nothing would give civil society organizations greater incentive than the establishment of forums in which they could be heard and taken seriously by public officials.

16. **Mr. Muntarbhorn** (Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity), introducing this first report to the General Assembly (A/72/172), said that the establishment of the mandate was an incentive to move forward together. It was unconscionable that persons whose sexual orientation or gender identity differed from the norm should be the targets of egregious violence and discrimination in many parts of the globe. In his report, he discussed two of the six areas of concern outlined in an earlier report to the Human Rights Council (A/HRC/35/36), namely, decriminalization and anti-discrimination measures.

17. Among recent positive developments, he warmly welcomed the growing momentum to abolish the death

penalty for consensual same-sex relations, the new Standards of Conduct for Business on tackling discrimination against lesbian, gay, bisexual, transgender and intersex people and, in countries that criminalized same-sex relations, recent judicial decisions vindicating the right of transgender people to have their self-identified gender recognized and permitting the registration of nongovernmental organizations active on such issues. At the same time, however, there were signs of regression. In some countries that criminalized consensual same-sex relations, lesbian, gay, bisexual and transgender people were being targeted not for their conduct, but for who they were. Sexual orientation and gender identity issues were being used for political ends to consolidate power bases or ostracize opponents, and human rights defenders active on those issues were being attacked.

18. With regard to decriminalization, in the past 20 years, around 25 countries had decriminalized consensual same-sex relations. However, more than 70 countries still criminalized consensual relations between men; at least 40 criminalized them between women as well, and a few African and Asian countries imposed the death penalty for such relations. Several countries had laws specifically criminalizing transgender persons on the basis of gender identity or expression, often with vague provisions leading to arbitrary human rights violations, including arrests and detentions. Elsewhere, public decency, public health or breach-of-peace laws were commonly used to criminalize the conduct of those people indirectly. Various religious laws also had a negative effect. Even where negative laws were seldom, if ever, enforced, their existence fed extortion, persecution, multiple and intersectional phobia, violence and discrimination. Reform could be initiated by checks and balances at the national level, but the role of human rights defenders and national human rights institutions should not be underestimated.

19. To combat discrimination, States needed to institute legal and practical anti-discrimination measures and to encourage the acceptance of sexual and gender diversity. While several countries had adopted legislation prohibiting discrimination on those grounds and guaranteeing equality before the law, national laws must be reflected in policies, practices and local regulations and must be followed up with case-by-case enforcement and litigation, access to mechanisms of protection and redress, adequate resourcing, monitoring, education, capacity-building and the creation of space for participation and inclusion.

20. Despite significant legal advances, important gaps remained. For example, fewer than half of the countries that offered legal protection from discrimination explicitly prohibited discrimination based on transgender identity. Only a few States had legal provisions prohibiting discrimination in all spheres of life; some legislation did not cover the private sector, and laws were not always properly enforced.

21. In addition to the recommendations in his report, he called for an immediate global moratorium on the death penalty for consensual same-sex relations as well as on direct and indirect criminalization of such relations and other acts associated with sexual orientation, gender identity and gender expression. An awareness campaign should accompany the moratorium. At the national level, protection against violence and discrimination based on sexual orientation, gender identity and gender expression should be incorporated more substantively into a broader range of anti-discrimination measures and should be accompanied by education not only for children, but also for law enforcement and other power groups. Lastly, stakeholders should capitalize on the international, regional and national instruments, forums and goals that provided opportunities to advance an inclusive agenda for all.

22. **Mr. Barros Melet** (Chile), speaking on behalf of Argentina, Brazil, Chile, Colombia, Costa Rica, El Salvador, Mexico and Uruguay, said that those countries welcomed the first report of the Independent Expert and reiterated their call to other special procedures mandate holders, treaty bodies, the United Nations High Commissioner for Human Rights, the Secretary-General of the United Nations and the leadership of other agencies, in collaboration with the Independent Expert, to continue to focus on the fight against violence and discrimination based on sexual orientation and gender identity. They noted that the inter-American system had made numerous contributions to the fight against violence and discrimination, in particular through the appointment of a regional rapporteur to address specifically the issue of lesbian, gay, bisexual, transgender and intersex persons.

23. **Mr. García Moritán** (Argentina) said that his country welcomed the fact that Argentina had been the first country to be visited by the Independent Expert and looked forward to the publication of the report on the visit, in particular the recommendations and proposals to strengthen legislation and national mechanisms for the promotion of the human rights of lesbian, gay, bisexual, transgender and intersex persons. The report of the Independent Expert focused on decriminalization and the fight against discrimination, which were central themes of Argentinian domestic policy. He asked how

States could help to strengthen the global trend of the decriminalization of consensual same-sex relations.

24. **Mr. Mminele** (South Africa) said that the Constitution of South Africa was premised on the fundamental principles of the promotion of human dignity, equality and non-discrimination of all persons; respect for the promotion, protection and fulfilment of human rights was therefore a critical pillar of its domestic and foreign policies. More clarification would be appreciated on the best possible approach to enhancing dialogue on the intersectionality between sexual orientation and gender identity and other issues, including racism and poverty, bearing in mind that the notions of sexual orientation and gender identity did not affect only one race.

25. **Ms. Amarillas Castellanos** (Mexico), drawing attention to the public consultations held in January 2017, said that Mexico welcomed the Independent Expert's encouragement of open and transparent dialogue with all stakeholders. Mexico would continue to work with the mandate, including by providing information for the preparation of reports, and it urged other States and stakeholders to do the same. Her delegation would like to know about the extent of international cooperation in support of national efforts to combat violence and discrimination based on sexual orientation, what role the United Nations could play and how such cooperation could be expanded and enhanced.

26. **Ms. Verstichel** (Belgium) said that as human rights were universal and indivisible, Belgium would remain engaged on the issue of protecting individuals from violence and discrimination regardless of race, religion or belief, gender identity or sexual orientation. The experience and at times divergent views of States were of particular importance in achieving tangible and long-term progress in the protection of the human rights of lesbian, gay, bisexual, transgender and intersex persons. Her country would continue to work in support of the United Nations human rights mandate holders, in particular the Independent Expert, to ensure access to a wide range of countries while fostering a climate of dialogue.

27. **Ms. Kadare** (Albania) said that it was the responsibility of Member States to protect vulnerable and often marginalized communities in society, and lesbian, gay, bisexual, transgender and intersex persons should be treated fairly and equally. Albania attached the utmost importance to the universal nature of human rights and the fundamental principles of equality and non-discrimination, and stood in solidarity with victims of unacceptable violence and discrimination based on sexual orientation and gender identity.

28. **Ms. Eckels Currie** (United States of America) said that the mandate of the Independent Expert was of critical importance to her country, especially at a time when lesbian, gay, bisexual, transgender and intersex persons around the world were being murdered, tortured and attacked. Dignity and equality were core universal human rights values as well as American values underpinned by the Constitution, and the United States would continue to stand up for the human rights of all persons. In 2017, it was unacceptable that such persons faced criminal charges relating to their status or conduct in around 80 countries, and it was intolerable that in some countries same-sex conduct was punishable by death. She asked what tools had been employed to engage with Governments that criminalized same-sex conduct and what more the international community could do to ensure that those issues remained priorities.

29. **Mr. Holtz** (United Kingdom) said that his country saw the appointment and work of the Independent Expert as integral elements of international efforts to tackle violence and discrimination and deliver on the commitment of the 2030 Agenda for Sustainable Development to leave no one behind. The Independent Expert stated in his report that the role of United Nations bodies was pivotal in raising the issue of violence and discrimination. He asked for clarification on the process envisaged from the moment of identification of a violation to the response of a United Nations country team.

30. **Mr. Jelinski** (Canada) said that his country, together with Chile, was co-President of the Equal Rights Coalition, which aimed to promote inclusive development and defend the rights of lesbian, gay, bisexual, transgender and intersex persons. Canada had had a long history of State-sponsored discrimination, homophobia, transphobia and biphobia, and serious problems remained, in particular for two-spirit indigenous persons and transgender persons. His country was committed to improving the situation and welcomed the fact that the Independent Expert had noted its new act on gender identity and gender expression. He asked what was the best way to ensure that lesbian, gay, bisexual, transgender and intersex persons were included in the implementation of the Sustainable Development Goals.

31. **Ms. Omiya** (Japan) said that her country would actively support the activities of the Independent Expert together with the LGBT Core Group. She asked how Member States could listen better to the voices and experiences of lesbian, gay, bisexual, transgender and intersex persons.

32. **Mr. Carabali Baquero** (Colombia) said that his country reaffirmed its commitment to the fight against violence and discrimination based on sexual orientation and gender identity. It had adopted a number of affirmative actions, including protection measures for social groups that could become victims of discrimination based on their sexual orientation with a view to guaranteeing their human rights and the full application of the principle of equality. Thanks to political empowerment, awareness-raising and capacity-building on human rights issues and the inclusion of lesbian, gay, bisexual, transgender and intersex persons in various institutions and social spheres, the hiding and silencing of those persons had gradually been reduced.

33. **Ms. Wacker** (Observer for the European Union) said that cultural, traditional or religious values could not be invoked to justify any form of discrimination or violence against any individual, including lesbian, gay, bisexual, transgender and intersex persons. It was a matter of concern that consensual same-sex relations were still criminalized in more than 70 countries, and Governments, together with civil society, should commit to working together to change those laws and to make anti-discrimination measures more effective. In June 2013, the Council of the European Union had adopted guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex persons. Support and protection for human rights defenders was another priority of the European Union, and she asked the Independent Expert to share best practices in that regard.

34. **Ms. Morton** (Australia) said that her country remained strongly committed to promoting equal human rights and non-discrimination for lesbian, gay, bisexual, transgender and intersex persons. It called on all States to decriminalize consensual same-sex relations and on States that applied the death penalty in those cases to cease all executions and establish a moratorium on the use of the death penalty. Despite comprehensive anti-discrimination measures in Australia, more remained to be done to remove the structural barriers that discriminated against lesbian, gay, bisexual, transgender and intersex persons in practice. Her country welcomed the contribution of its national human rights institution to the Independent Expert's report, and encouraged all national human rights institutions to engage with the mandate. She asked what were the most common structural barriers in States with effective anti-discrimination measures.

35. **Ms. Charrier** (France), noting that homosexuality was still criminalized in more than 70 countries and that the death penalty was sometimes applied, asked how the international community could work jointly towards universal decriminalization of homosexuality. Her delegation would also be interested to hear how the United Nations could better protect defenders of the rights of lesbian, gay, bisexual, transgender and intersex persons from threats and attacks. Discriminatory laws, policies and practices should be repealed, and their application should cease immediately. As a member of the LGBT Core Group and the Equal Rights Coalition, France remained fully committed to that issue.

36. **Mr. Bastida** (Spain) said that his delegation was pleased that some of the measures adopted by the Government of Spain to combat discrimination based on sexual orientation and gender identity had been recognized by the Independent Expert in his report. Spain was of the view that education was key in the fight against violence and discrimination based on sexual orientation and gender identity and would like to hear some good practices for promoting acceptance of diversity. Work had begun to develop a State strategy on the rights of lesbian, gay, bisexual, transgender and intersex persons with the aim of eliminating discrimination, promoting acceptance and social and legal recognition of family diversity and forming anti-discrimination plans for the public sector.

37. **Mr. Kelly** (Ireland) said that the creation of the role of the Independent Expert had sent an important message of solidarity to the members of the lesbian, gay, bisexual, transgender and intersex community, and his country was therefore concerned and disappointed at the efforts made by some States to defer the implementation of the mandate. It fully agreed with the recommendations in the report and hoped that all States would implement them. Noting the conclusion in the report that the phenomenon of violence and discrimination based on sexual orientation and gender identity was both local and global and required strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights laws, he asked for examples of best practices and measures in that regard.

38. **Mr. Oppenheimer** (Netherlands) noted that the Independent Expert stated in his report that the 2030 Agenda offered an opportunity to tackle violence and discrimination on the basis of sexual orientation and gender identity, and asked how that element could be integrated into the work on the Sustainable Development Goals.

39. **Ms. Schoulgin-Nyoni** (Sweden), speaking on behalf of Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden, said that those

countries fully echoed the Independent Expert's call on States to ensure that a variety of stakeholders adopted educational and capacity-building measures with regard to sexual orientation and gender identity, and asked what was the most suitable way to approach that issue. They also fully shared the view that civil society helped to energize the path to legislative reform, and asked what the main obstacles were for non-governmental organizations, human rights defenders and those working to achieve reform of discriminatory legislation.

40. **Ms. Učakar** (Slovenia) said that her country appreciated the emphasis on the key role of civil society and human rights defenders, which made an important contribution to combating stigmatization. Human rights education was an important tool to raise awareness and acceptance of diversity in societies from an early age. She asked what the best way was to approach the plight of lesbian, gay, bisexual, transgender and intersex children and young people in relation to violence and discrimination, such as bullying at school and at home.

41. **Mr. Clyne** (New Zealand) said that in New Zealand, the homosexual law reform act of 1986 had decriminalized relations between men aged 16 and over, the reforms of 1993 to the human rights act had prohibited discrimination on the grounds of sexual orientation, and same-sex marriage had been legalized in 2013. In 2017, Parliament had formally apologized to the men convicted under old laws that had criminalized homosexuality and had passed legislation to expunge convictions for historical homosexual offences. The high frequency of State-sanctioned or State-tolerated violence and discrimination based on sexual orientation or gender identity around the world was completely intolerable and unacceptable

42. **Ms. Macherel** (Switzerland) noted that the Independent Expert had underlined the increasing role of social media as a platform for hate speech and incitement to violence and stated that empathy was a basic requirement in combating discrimination. She asked how an environment conducive to empathy could be created and what should the other priority areas be in anti-discrimination efforts. She also asked how the implementation of the 2030 Agenda contributed to the advancement of the mandate and what support could be provided by the international community.

43. **Mr. Strohmayer** (Israel) said his country called on Governments to decriminalize consensual same-sex relations and adopt anti-discrimination measures to help to prevent and overcome violence against the lesbian, gay, bisexual, transgender and intersex community. Israel partnered with civil society organizations to guarantee rights to all persons fighting discrimination based on sexual orientation or gender identity, raising public awareness and educating young people about the importance of acceptance and tolerance. As a member of the LGBT Core Group and the Equal Rights Coalition, Israel was at the forefront of the struggle to end violence and discrimination against individuals based on their sexual orientation and gender identity. Fighting discrimination and violence against such persons did not imply creating new rights to a new group but rather guaranteeing the same rights to all people equally, and the entire international community should be involved in that endeavour without politicizing the issue.

44. **Ms. Sammut** (Malta) said that her country was one of just two States whose Constitution explicitly included sexual orientation and gender identity as grounds for non-discrimination. The rights of trans, intersex and gender variant persons were often overlooked in gender equality discussions; during the sixty-first session of the Commission on the Status of Women, Malta had therefore hosted a side event on legal reforms to protect the human rights of those persons with the intention of raising awareness and indicating actions that could be taken by Member States to that end. Her country had adopted an act on gender identity, gender expression and sex characteristics allowing all persons to change their name and align their gender on official documents following a notarial declaration and introduced laws recognizing all sexual orientations, gender identities and gender expressions as equally valid, banning conversion practices and changing the pathological view of sexual orientation, gender identity and gender expression.

45. **Mr. Muntarbhorn** (Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity) said that, to promote decriminalization, checks and balances at the local and national levels, peer examples and regional and interregional cooperation could be useful. He noted the excellent cooperation between the inter-American and the African human rights systems, with the support of the Office of the United Nations High Commissioner for Human Rights, in countering violence and discrimination. Many United Nations agencies had direct or indirect programming against violence and discrimination that also covered lesbian, gay, bisexual, transgender and intersex issues.

46. At the multilateral level, many United Nations programmes worldwide already addressed those issues. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) was already working against bullying in many countries. Anti-violence and anti-discrimination messages could be

inserted into HIV and health-related programming. Direct programming could also be employed, such as the programme relating to lesbian, gay, bisexual, transgender and intersex persons in the Asia region supported by bilateral agencies and the United Nations Development Programme.

47. Possible tools for engagement with Governments, in particular on criminalization issues, included information, capacity-building, dialogue and advisory services. The Sustainable Development Goals were a good entry point for inserting coverage for everyone without discrimination, including on the issues of anti-violence and anti-discrimination. Good role models and positive examples were needed to ensure the inclusion of lesbian, gay, bisexual and transgender persons in the Sustainable Development Goals. Some countries, such as Argentina, had adopted affirmative action programmes, including a quota for transgender people to encourage greater inclusion.

48. The voices of lesbian, gay, bisexual and transgender persons could be better heard at the local and national levels through their direct inclusion in various forums. Lesbian, gay, bisexual and transgender groups should be given access to regional human rights systems and the United Nations system as a whole.

49. With regard to supporting and protecting human rights defenders, the freedoms of association and speech should be ensured, action against reprisals should be taken, and access to funding, registration and participation should be guaranteed.

50. Structural barriers ranged from systemic issues to antiquated laws. A total approach to removing such barriers would involve the reform of old laws and the adoption of better laws, policies and practices. Laws that were not compliant with international human rights should not be implemented.

51. Good examples of practices for promoting acceptance of diversity could be seen in many countries. Gender recognition and gender identity laws were becoming more widespread in terms of enabling transgender people to reflect their real gender identity without coercion or medical imposition.

52. All 17 Sustainable Development Goals were opportunities for integrating action against violence and discrimination, but Goal 16 in particular provided a good opportunity to integrate a message and action to leave no one behind, including in regard to sexual orientation and gender identity. Many Governments were submitting voluntary reports through the high-level political forum on sustainable development, and he hoped that they would include specific action on sexual orientation and gender identity.

53. There were good examples of human rights education, in particular as supported by UNESCO. Education provided an opportunity to nurture an understanding public in terms of gender diversity from a young age. The catalytic triangular relationship between child, teacher and parent and the participation of various actors at the local level were extremely important in that regard.

54. Positive social media in terms of promoting care, compassion and respect for human rights without discrimination should be encouraged. Action needed to be taken against negative media. In some cases, criminal laws were needed against incitement to hatred, hostility and violence in keeping with international standards, in particular the International Covenant on Civil and Political Rights.

55. **Mr. Lynk** (Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967), introducing his report, said that one of the fundamental obligations of membership in the United Nations, as laid out in the Charter and in the Convention of the Privileges and Immunities of the United Nations, was for States to cooperate with the various organs of the United Nations, including Special Rapporteurs. However, Israel had refused to cooperate with the mandate, denying visits from the Special Rapporteur and refusing to respond to his communications. The human rights communities in Palestine and Israel had extended cooperation to the Special Rapporteur and had issued excellent reports, as had the Government of Jordan and the Palestinian Authority, but that was no substitute for a country visit. The refusal of the Government of Israel to engage was contrary to its obligations to cooperate with the international human rights system and to its duties as a member of the United Nations.

56. Among pressing humanitarian and human rights issues in the occupied Palestinian territories, the humanitarian situation in Gaza had become increasingly serious, with extremely limited access to electrical power and drinking water. Over 60 per cent of Gazans depended partly or wholly on humanitarian aid, which had led to a shrinking of its economy. In the West Bank and East Jerusalem, the steady increase in new settlement construction and the annexation of the Jordan Valley were of great concern.

57. The Israeli occupation had lasted 50 years, the longest-running occupation in the modern world. The international community had heretofore treated Israel as the lawful occupant of the occupied Palestinian

territories, but settlements, the construction of the separation wall, annexation of East Jerusalem and parts of the West Bank and systematic human rights violations had rendered that legal characterization inadequate. That led to the main question addressed in the report: could an occupying Power engaged in a protracted occupation and committing violations of international law in its treatment of the occupied territory have crossed a line and become an illegal occupant?

58. He proposed a four-part test, anchored in international law, to determine the answer to that question. First, a well-established and universally endorsed principle was that an occupier could not annex or gain title to any part of an occupied territory. Moreover, occupation could be neither indefinite nor permanent. The occupying Power must also act in the best interests of the protected people under occupation, subject only to legitimate security concerns. Lastly, the occupying Power must administer the territory in good faith. There were many precedents for that test in the work of the United Nations towards decolonization, in particular the case of Namibia.

59. In his view, Israel was in violation of all four parts of the test and had crossed the line into illegality. As the human rights situation continued to deteriorate and as Palestinians bore the brunt of Israel's violations of international law, the international community must employ the appropriate legal and diplomatic tools to ensure that the occupation finally and completely came to an end.

60. **Ms. Rasheed** (Observer for the State of Palestine) said that the report could serve to transform the discussion of the Israeli occupation of Palestinian territory by focusing on its illegality rather than merely its illegal violations as occupier. The current report differed from those of the past two years in that it did not go into detail about the host of violations committed by Israel in the context of its military occupation. While those violations had been touched on, the report mainly illustrated that the Israeli occupation had become illegal under international law. That illegality was most clear through the continued colonization by Israel of Palestinian land, which had led to a situation of de facto annexation, and by its exploitation and theft of natural resources.

61. Moreover, the fact that nearly every single United Nations resolution had been repeatedly violated and ignored by Israel demonstrated that the occupying Power was not acting in good faith. During the twenty years of the peace process, which was supposed to end the occupation and establish an independent Palestinian State on 22 per cent of historical Palestine, the settler population had doubled, the occupation was further entrenched and violations continued with impunity. Part of the reason that such a state of affairs had been allowed to continue was that the international community had failed to hold Israel accountable.

62. She asked the Special Rapporteur to elaborate on the implications of a finding that the occupation was illegal: what would happen to the legal framework protecting the occupied people and what would be the obligations of the international community upon such a declaration?

63. **Ms. Furman** (Israel) said that the Human Rights Council was founded on the principles of universality, impartiality, objectivity and non-selectivity. However, there was nothing objective about the mandate of the Special Rapporteur, as it was one-sided, targeted Israel and ignored the blatant human rights violations against Palestinians and Israelis by Hamas and the Palestinian Authority. Hamas was an internationally-recognized terrorist organization that hid rockets in mosques, built terror tunnels under United Nations schools and used its own people as human shields. The Palestinians arrested journalists who dared to report negatively about their actions, jailed political dissidents and tortured prisoners. The Palestinian Authority paid salaries to terrorists to kill innocent Israelis.

64. No true champion of human rights would consider serving in the role of Special Rapporteur under such a blatantly biased mandate. The antipathy of the Special Rapporteur to Israel was no secret. He had compared Israel to the Nazis, had accused it of ethnically cleansing the Palestinians, and had very recently called for academic sanctions against Israel. It was clear that he had chosen to exploit the United Nations to promote his personal anti-Israel agenda and therefore should resign immediately.

65. **Ms. Scott** (Namibia) said that her delegation regretted that Israel had not granted permission to the Special Rapporteur to visit the country, forcing him to compile his report from information provided by persons in the occupied territories and human rights defenders. It was perplexed by the Israeli stance, since it had an interest in demonstrating compliance with international human rights laws. The situation was reminiscent of the apartheid colonial regime that had ruled Namibia for over 40 years, which was well known for its hardline stance and vilification of the United Nations. It was therefore fitting that the report referred to the advisory opinion of the International Court of Justice on Namibia issued in 1971.

66. Given the prolonged occupation, characterized by a persistent failure by the occupying Power to comply

with its obligations, including implementation of United Nations resolutions, she asked the Special Rapporteur to elaborate on the possibility of seeking an advisory opinion on the Palestine issue from the International Court of Justice. In addition, given the deteriorating living conditions of Palestinians in Gaza, she wondered whether the Special Rapporteur would characterize the situation as collective punishment of that population.

67. **Mr. Mminele** (South Africa) said that his Government had consistently voiced its position against the human rights and humanitarian law violations associated with the occupation. The assessment of the Special Rapporteur in paragraphs 8 to 10 of his report painted a bleak picture of the enjoyment of economic, social and cultural rights, especially the right to health, by the Palestinians. His Government had issued a statement in April 2017 condemning the settlement activity in occupied Palestinian territory. South Africa shared the view of the Special Rapporteur that the Israeli occupation had become an occupation without end, and that the international community had treated Israel as a lawful occupant.

68. **Ms. Moutchou** (Morocco) said that the Palestinian question was at an impasse, without any possibility of negotiations Jerusalem was a symbol of coexistence and had a special status for the followers of three religions. The Kingdom of Morocco and its King called for the creation of a State of Palestine within the 1967 borders, with East Jerusalem as its capital, as a means towards ending the Middle East conflict and promoting international security.

69. **Mr. Alasim** (Saudi Arabia) said that the report of the Special Rapporteur had reflected only a part of the suffering borne by the Palestinians due to the oppressive Israeli occupation. Israel continued to ignore international law and violate human rights. It persisted in its confiscation of land and property and settlement-building. Saudi Arabia reiterated its support for all efforts to end the brutal occupation of Palestinian land and called on the international community to move quickly to find a solution to the crisis.

70. **Ms. Sandoval** (Nicaragua) asked how the illegal Israeli settlement policy was affecting the livelihoods and right to development of the Palestinians and how the opportunities for protection and economic development available to them compared with those available to the Israeli settlers.

71. **Mr. Forax** (Observer for the European Union) said that a negotiated two-State solution that ended the occupation and fulfilled the aspirations of both sides was the only way to bring lasting peace and security. The European Union deplored the Israeli settlement policy, which was illegal under international law and threatened the viability of the two-State solution. Furthermore, the European Union condemned terror and violence on all sides and in all circumstances. It welcomed the agreement signed in Cairo in October 2017, which, if fully implemented, could be an important step towards achieving Palestinian unity.

72. **Mr. Castillo Santana** (Cuba) said that his delegation advocated the recognition by the United Nations of a State of Palestine within the 1967 borders, with East Jerusalem as its capital. Cuba reiterated the need for a just, peaceful and lasting solution to the Israeli-Palestinian and Israel-Arab conflicts, which would not be possible if justice was denied to the victims of grave human rights violations.

73. **Ms. Qu** Jiehao (China) said that her country had been following the human rights situation in the occupied Palestinian territory and hoped that both parties would remain committed to the two-State solution and relaunch peace talks. During a visit by President Abbas of Palestine to China in July 2017, Chinese President Xi Jinping had put forward the Government's four-point position, which advocated a political settlement based on the two-State solution, a shared vision with respect to security, coordination among the international community and measures to foster peace through development.

74. **Mr. Canay** (Turkey) said that the illegal settlement policy of Israel continued to violate international law and relevant United Nations resolutions and damaged the vision for a two-State solution. It was important to preserve the historical status and sanctity of Aqsa Mosque, as any attempts to change the status quo in that regard jeopardized peaceful coexistence. Turkey continued its efforts to improve Palestinian living conditions through development assistance and reconstruction projects. Furthermore, Turkey supported the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

75. **Mr. Rosdi** (Malaysia) said that Palestinians in East Jerusalem had been subjected to grave violations, making their lives unbearable and forcing many of them to leave the city. Such illegal practices included restrictions on movement, denial of building permits and the revocation of Jerusalem identification papers. He asked about the implications of such policies for Palestinians' livelihoods and human rights.

76. **Mr. Hassani Nejad Pirkouhi** (Islamic Republic of Iran) said that his delegation welcomed the report of the Special Rapporteur and its discussion of the electricity crisis in Gaza, the expansion of illegal settlements, the destruction of Palestinian homes in East

Jerusalem and the continued refusal by Israel to implement Security Council resolutions. It also appreciated the deep legal review of the status of the occupation. He asked whether the Special Rapporteur had asked close allies of Israel to urge that country to allow him to visit occupied Palestinian territory.

77. **Mr. Hassani** (Indonesia) said that his country called on the international community to push for peace. Issues such as fundamental human rights, freedom of movement, poverty and freedom from fear should be prioritized. The occupying Power must end its practice of extrajudicial killings, deliberate destruction of infrastructure and expansion of settlements.

78. **Mr. Aseel** (Maldives) said that the crisis in the State of Palestine was entirely man-made and the result of the illegal and prolonged Israeli occupation. Since the occupation had begun, generations of Palestinians had been denied their fundamental rights. The occupation was a flagrant violation of international law and had been rejected by the Member States. An independent and sovereign Palestine with East Jerusalem as its capital, living side by side with Israel, was the only way forward.

79. **Mr. Torbergsen** (Norway) said that his Government urged Israel to cooperate with the Special Rapporteur and grant him full access to the Palestinian territories. It was imperative that the rules and principles of international humanitarian and human rights law were upheld. Any policies and practices infringing on the basic rights of the Palestinian population were of grave concern. Norway shared concerns about administrative detention, demolitions, and forcible transfer and practice amounting to collective punishment. Peace, security and prosperity for both Israelis and Palestinians could only be achieved through a negotiated two-State solution.

80. **Mr. Ustinov** (Russian Federation) said that the recommendations made in the report of the Middle East Quartet of 2016 were still relevant. The only solution was one that would lead to the creation of an independent, contiguous, sovereign and viable Palestinian State, living side-by-side with Israel in peace and security and guaranteeing adherence by its citizens to human rights standards. The Russian Federation advised against unilateral measures that undermined efforts to restart the political process. The main strategic aim should be to resume negotiations, and his country was ready to assist in that endeavour

81. **Mr. Alhakim** (Iraq) said that his delegation reiterated its solidarity with the Palestinian people and with other Arab peoples living under occupation in the Syrian Golan and the occupied Lebanese Shab'a Farms. The international community must put an end to the occupation and compel Israel to implement international law and relevant Security Council resolutions. Nevertheless, the legitimate struggle of the Palestinian people persisted, in order to acquire their freedom and their national rights. The item on Palestine would remain on the General Assembly agenda and his delegation would work with those States that supported the Palestinian question to raise the issue of their oppression at all international and regional forums.

82. **Mr. Qassem Agha** (Syrian Arab Republic) thanked the Special Rapporteur for his courage in discussing the terrorism practiced by the brutal Israeli entity against the Palestinian people. It came as no surprise that it had refused to meet the Special Rapporteur, as that entity did not believe in the culture of peace. It had murdered the United Nations envoy Count Bernadotte in 1948 at the hands of the Stern Gang, led by Yitzhak Shamir. It occupied the Syrian Golan and committed massacres in Lebanon. The illegal occupation supported terrorism in Syria and therefore it could be said that Israel and Islamic State in Iraq and the Levant were two sides of the same coin.

83. **Mr. Moussa** (Egypt) said that the previous week, news outlets had confirmed that draft legislation calling for the formation of a greater Jerusalem municipality would soon go before a ministerial committee for adoption as a Government bill, which would fast-track the legislation's progress. Such a law would threaten the internationally-agreed two-State solution. He asked the Special Rapporteur to explain the possible implications of such a unilateral measure by Israel, and how the international community could compel Israel to abandon it.

84. **Mr. Lynk** (Special Rapporteur on the situation of human rights in the Palestinian Territory occupied since 1967) said that the 1971 finding of the illegality of the South African occupation of Namibia had prompted the international community to limit trade and avoid investment in or recognition of South African rule in Namibia. The General Assembly should take a number of actions, including commissioning a United Nations study on the question of the illegality of the continued occupation of the Palestinian Territories. It should also seek an advisory opinion from the International Court of Justice on that issues, and could sponsor a legal study of the ways in which Member States could ensure respect for international law and fulfil their duty of non-recognition and their duty to investigate or, if need be, prosecute, grave breaches of the Geneva Conventions. Such duties stemmed from common article 1 of the Geneva Conventions of 1949, and article 25 of the Charter of the United Nations on the obligations of

Member States to accept and carry out the decisions of the Security Council. If none of those actions yielded results, the General Assembly should consider the adoption of a Uniting for Peace resolution with respect to the question of Palestine, if it were determined that the occupation was no longer lawful.

85. With respect to the framework of protection if the international community determined that the role of Israel as occupant was no longer lawful, he said that it was clear from the 1971 ruling on the Namibian case that a decision of illegality would not affect the international protection framework such as the Geneva Conventions and other laws relevant to the governance of an occupation. A declaration of illegality would maintain protections for the Palestinians until the occupation came to an end. The international community had a range of diplomatic tools at its disposal, but a study commissioned by the General Assembly might be needed to determine what those were. Those options should be commensurate with the degrees of cooperation that Israel would give if it decided to surrender the occupation and recognize the self-determination of the Palestinian people.

86. Turning to the statement of the representative of Israel, he said that advancing ad hominem attacks instead of addressing the issues raised in the report had never been a helpful approach in either a diplomatic or legal forum. It would have been more conducive to the advancement of the debate and more helpful for the position of Israel itself if the representative had addressed the issues directly. He stood by the issues he had raised and was confident of their legal foundations.

87. Addressing the question of how the settlement enterprise had affected the Palestinians, he said that of all the human rights violations in the occupied territories, settlement activity was perhaps the gravest and most flagrant. It entailed the loss of property, severe restrictions on movement and the development of a Palestinian economy and the pillage of water and other resources. Most of all, however, it entailed a separate and unequal legal and political regime that had no place in the modern world.

88. A number of delegations, including that of Iran, had urged Israel to cooperate with the mandate. Although he had access to excellent reports and had held meetings with Israeli human rights defenders, those resources were no substitute for in-country visits. Israel should therefore rethink its stance of non-cooperation.

89. With respect to the new Jerusalem bill mentioned by the representative of Egypt, he feared it would be a step towards the de facto annexation of some of the settlement blocks in and around Jerusalem. Just as in 1967, when the initial annexation had been disguised under the euphemism of "municipal fusion", the borders of Jerusalem were growing in an attempt to reconfigure the demographic composition of the city. Such a reconfiguration would bring hundreds of thousands of Israeli settlers into the municipality by extending the laws of the municipality to them, a development that should be of great concern to the international community.

The meeting rose at 1.05 p.m.